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S. 2271 - The Property Rights Implementation Act of 1998

Calendar No. 459

Introduced in the Senate on July 7, 1998 and read the first time. Under Rule XIV, the bill was placed directly on the Calendar on July 8, 1998. A cloture petition has been filed and the Senate will vote to invoke cloture on the motion to proceed at 5:45 p.m. on Monday, July 13, 1998.

NOTE WORTHY

- S. 2271 addresses the problem of providing property owners fair access to Federal courts to vindicate their Federal constitutional rights. The bill is procedural and does not create any new substantive rights.
- The bill has two purposes. The first is to provide private property owners claiming a violation of the Fifth Amendment's taking clause some certainty as to when they may file a claim in Federal court. The second is to clarify the jurisdiction between the Court of Federal Claims in Washington, D.C., and the regional Federal district courts over Federal Fifth Amendment takings claims.
- Similar legislation, H.R. 1534, was introduced in the House on May 6, 1997 by Rep. Elton Gallegly. Two hundred and thirty seven Congressmen joined Rep. Gallegly as cosponsors, 133 of whom are former state and local officeholders. The bill was reported favorably by the House Judiciary Committee by a vote of 18 to 10. The House passed the bill, with amendments, on October 22, 1997 by a recorded vote of 248 to 178.
- H.R. 1534 was referred to the Senate Committee on the Judiciary on November 13, 1997. On February 26, 1998, a motion to favorably report a substitute for H.R. 1534, offered by Chairman Hatch, was approved by a vote of 10 to 8. The substitute bill included the substance of H.R. 1534, as passed by the House, and incorporated additional language which resolves a federal court jurisdictional problem known as the "Tucker Act Shuffle."
- The bill also addresses the judicial doctrine of "abstention" whereby a federal judge may exercise discretion in deciding whether or not to accept cases that are properly under the court's jurisdiction. The bill requires that federal courts adjudicate the merits of an aggrieved property owner's claims where those claims are solely based on federal law. Usage of the Act by a claimant is *optional*.

HIGHLIGHTS

- The bill protects state sovereignty by ensuring that any question of state or local law that is both patently unclear and fundamental to the merits of a case is to be remanded back to state courts before a federal court can continue.
- The bill does not amend any environmental law or any federal statute protecting human health and safety but it does require that Federal agencies take into consideration the impact of their decisions on private property owners before acting.
- The bill exempts localities from the requirement that they pay attorney's fees in the event that the locality loses a takings claim.
- The bill limits takings claims to takings of "real property."

BILL PROVISIONS

Section 1. Short Title

- This section entitles the bill the "Property Rights Implementation Act of 1998."

Section 2. Findings

- This section makes a series of ten findings with respect to abrogation of property rights, including findings that property rights have been abrogated by the application of laws, regulations, and other actions by all levels of government that adversely affect the value and the ability to make reasonable use of private property.
- Another finding concludes that the Tucker Act (ss 1346 and 1402 and chapter 91 of Title 28, U.S.C.), which delineates the jurisdiction of courts hearing property rights claims, frustrates the ability of a property owner to obtain full relief for violation founded upon the Fifth and Fourteenth amendments to the U.S. Constitution, and should be amended.

Section 3. Purposes

- Section 3 states that the purpose of the bill is to establish a clear, uniform, and efficient judicial process for claims based on the Constitution's Fifth and Fourteenth amendments by amending the Tucker Act and the judicial ripeness and abstention doctrines.

Section 4. Definitions

- This section defines pertinent terms used in the bill.

Section 5. Private Property Actions

- This section of S. 2271 grants concurrent jurisdiction to the U.S. Court of Federal Claims and U.S. district courts over civil actions challenging the validity of any Federal agency action as a violation of the Fifth amendment, whether the claimant seeks monetary relief or invalidation of the action.
- The bill also gives the U.S. Court of Appeals for the Federal Circuit exclusive appellate jurisdiction for claims filed under this section. The section also includes an express waiver of sovereign immunity, a six-year statute of limitations, and a provision requiring an award of attorneys' fees and costs to any prevailing plaintiff.

Section 6. Jurisdiction of Courts

- S. 2271 amends the jurisdiction of the Court of Federal Claims so that in claims that are otherwise within its jurisdiction, it may grant injunctive and declaratory relief. Under this section the Court of Claims is given supplemental jurisdiction over tort claims against the United States.
- The bill declares that claims brought in these courts are ripe for adjudication upon a final decision by the United States or other state or local government entity. Defines "final decision" and sets forth various conditions that must be met by plaintiffs. It also declares that a "final decision" does not require that the plaintiff exhaust all state judicial remedies prior to filing a claim in federal court.
- The section also directs that a U.S. district court shall not abstain from exercising jurisdiction over a claim concerning the use of real property if such action does not include a claimed violation of a state law, right or privilege and a parallel proceeding in State court is not pending.
- The bill provides that if a claim cannot be decided without resolution of an unsettled question of state law, the section allows the district court to certify the question to the state's highest appellate court while retaining jurisdiction of the merits of the case.

Section 7. Duty of Notice to Owners

- This section provides that any Federal agency that takes action limiting the use of private property must give notice to the affected private property owner. The notice must include an explanation of rights and procedures set forth in the Act.

Section 8. Rules of Construction

- This section declares that the Act does not preempt states from creating additional property rights.

Section 9. Effective Date

- Declares that the Act shall apply to agency actions commenced on or after the date of enactment.

ADMINISTRATION POSITION

No Statement of Administration Position was available at press time. However, the Justice Department has, in a letter, strongly criticized the legislation. Administration opposition is expected.

COST

The Congressional Budget Office notes that the bill is likely to impose additional costs on the U.S. court system but would not affect direct spending or receipts of the federal government, and therefore, pay-as-you-go procedures would not apply. Any additional costs such as awards would come from appropriated funds but CBO has no way of estimating such costs.

OTHER VIEWS

Senators Leahy, Kennedy, Biden, Kohl, Feinstein, Feingold, Durbin, and Torricelli filed extensive minority views strenuously opposing the bill.

POSSIBLE AMENDMENTS

Amendments are anticipated.

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